

TWENTY-FIRST DAY
(Wednesday, February 24, 1993)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend John R. Pitts, Rector, St. Matthew's Episcopal Church, Austin, offered the invocation as follows:

Heavenly Father, You bring us to this day, a day some call Ash Wednesday, a day when we are called upon to focus on our relationship with You. Help us, Lord, remember this relationship this day and remember the love and the care which You have for each of us. Amen.

On motion of Senator Harris of Dallas and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

CO-AUTHOR OF SENATE BILL 13

On motion of Senator Brown and by unanimous consent, Senator Nelson will be shown as Co-author of S.B. 13.

CO-AUTHORS OF SENATE BILL 79

On motion of Senator Zaffirini and by unanimous consent, Senators Moncrief, Patterson, and Truan will be shown as Co-authors of S.B. 79.

CO-AUTHORS OF SENATE BILL 243

On motion of Senator Leedom and by unanimous consent, Senators Nelson and Rosson will be shown as Co-authors of S.B. 243.

CO-AUTHOR OF SENATE BILL 334

On motion of Senator Shapiro and by unanimous consent, Senator Nelson will be shown as Co-author of S.B. 334.

CO-AUTHOR OF SENATE BILL 364

On motion of Senator Moncrief and by unanimous consent, Senator Harris of Tarrant will be shown as Co-author of S.B. 364.

BILL AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bill and resolutions in the presence of the Senate after the caption had been read:

H.C.R. 41**S.C.R. 29****S.C.R. 31****S.B. 2****SENATE BILLS ON FIRST READING**

The following bills were introduced, read first time, and referred to the committees indicated:

S.B. 446 by Armbrister Jurisprudence
Relating to the creation of a judicial district composed of Fort Bend County.

S.B. 447 by Lucio Jurisprudence
Relating to regulation of private process servers; providing penalties.

S.B. 448 by Lucio State Affairs
Relating to the procedures applicable to the registration of motor vehicles.

S.B. 449 by Lucio State Affairs
Relating to regulation of certain motor vehicle dealers and the sale, titling, and registration of certain motor vehicles.

S.B. 450 by Sibley, Ellis State Affairs
Relating to authorized investment of the state and certain units of local government.

S.B. 451 by Ratliff Administration
Relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 72nd Legislature to other Acts of that legislature.

S.B. 452 by Rosson State Affairs
Relating to enforcement and exemptions from registration of certain tow trucks.

S.B. 453 by Patterson Intergovernmental Relations
Relating to the location of certain cemeteries.

S.B. 454 by Barrientos, Zaffirini, Rosson Education
Relating to the expansion of the Communities in Schools program.

S.B. 455 by Patterson Health and Human Services
Relating to mandatory premarital testing for sexually transmitted diseases.

S.B. 456 by Ellis, Shapiro, West, Criminal Justice
Barrientos, Luna, Moncrief, Patterson, Rosson, Turner, Zaffirini, Carriker, Leedom, Madla, Montford, Sims, Truan

Relating to the creation of the offenses of hate crime and institutional vandalism, civil actions for hate crimes, and the collection and maintenance of information about hate crimes; prohibiting inmates of the institutional division of the Texas Department of Criminal Justice from receiving hate publications.

S.B. 457 by Bivins, Lucio, Luna, Nelson
Relating to the regulation of motor carriers.

State Affairs

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas
February 23, 1993

TO THE SENATE OF THE SEVENTY-THIRD LEGISLATURE,
REGULAR SESSION:

I ask the advice, consent, and confirmation of the Senate with respect to the following appointment:

TO BE PUBLIC COUNSEL OF THE OFFICE OF CONSUMER
PROTECTION, STATE BOARD OF INSURANCE, for a term to expire
February 1, 1995:

AMY RUTH JOHNSON
1310 Kenwood Avenue
Austin, Texas 78704

Ms. Johnson is being reappointed.

Respectfully submitted,

/s/Ann W. Richards
Governor of Texas

CAPITOL PHYSICIAN

Senator Sims was recognized and presented Dr. John Davis of Kerrville as the "Doctor for the Day."

The Senate welcomed Dr. Davis and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Turner was recognized and introduced to the Senate the following family members of Jubal Richard Parten of Madisonville, who died November 9, 1992, at the age of 96: his son John R. Parten, his daughter Patricia Anderson, and his grandson Charles Kuehn, Jr.

The Senate welcomed these guests and expressed its sympathy to the family.

At the request of the President, Senator Turner escorted the family members to the President's rostrum, where they were presented with an enrolled copy of S.C.R. 19.

The resolution was previously read and adopted on Thursday, February 4, 1993.

SENATE RESOLUTION 259

Senator Nelson offered the following resolution:

WHEREAS, On Wednesday, February 24, 1993, Denton County Day will be celebrated by the proud citizens of Denton County in recognition of their illustrious county and its contributions to the State of Texas; and

WHEREAS, Situated in the 10-county area known as the Dallas-Fort Worth Metroplex, the rapidly growing area of 952 square miles known as Denton County is now the fifth fastest growing county in the nation and the fastest growing county in the state and is becoming increasingly known for its superior quality of life and tremendous growth in both residential and commercial development; and

WHEREAS, Denton County was one of several counties created out of the Peters Colony Grant by the First Legislature of Texas on April 11, 1846; it was named in honor of pioneer preacher, lawyer, and Indian fighter John B. Denton; and

WHEREAS, Designed in 1895 and restored in 1987, the stately Denton County Courthouse, consisting of massive limestone blocks and crowned with a soaring clock tower, is one of the most impressive sights in North Texas; and

WHEREAS, The county seat has an unsettled history; the first four legislatures of Texas authorized changes in the county seat until a site was finally chosen by a vote of the citizens and the town was named Denton; and

WHEREAS, The educational opportunities presented by the county center around the two major universities, the University of North Texas and Texas Woman's University, and around the excellent public and private schools graduating merit scholars; and the county's public schools rank among the state's highest college-bound providers; and

WHEREAS, Historically a rich agricultural area, the county has now become a growing hub for modern high technology industries with numerous manufacturing facilities including Texas Instruments, Boeing, Xerox, and Peterbilt; and

WHEREAS, The county presents varied cultural opportunities from the annual Denton Jazzfest to the Arts Complex, and it has continued its fervent interest in the arts and religion; and

WHEREAS, Residents and six million-plus visitors annually are attracted to the popular recreational areas of Lake Lewisville, the new home of the Hydrofest races, Lake Ray Roberts, and Lake Grapevine; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 73rd Legislature, hereby congratulate the residents of Denton County on this grand occasion; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Denton County in recognition of this momentous event and as an expression of congratulations from the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Nelson was recognized and introduced the following guests here in celebration of Denton County Day: Al Judkiewitz, A. E. Wyatt, Pat Marshall, James Loveday, Scott Arme, Kirk Wilson, and Don Hill.

Senator Carriker was recognized and joined Senator Nelson in acknowledging the guests here for Denton County Day.

The Senate welcomed these guests.

(Senator Harris of Dallas in Chair)

SENATE RESOLUTION 316

Senator Haley offered the following resolution:

S.R. 316, Declaring February 24, 1993, "Stephen F. Austin State University Day" at the State Capitol.

The resolution was read and was adopted by a viva voce vote.

(Senator Parker in Chair)

GUESTS PRESENTED

Senator Haley was recognized and introduced the following delegation here in celebration of Stephen F. Austin State University Day: Dr. Dan Angel, President of Stephen F. Austin State University; Judy McDonald, Mayor of Nacogdoches; Dan Wallace, Dean of Student Development; Joel Wyatt, President of the Student Government Association; Christian Tucker, Mr. Stephen F. Austin; and Kim Edge Vice-president of the student body.

The Senate welcomed these guests.

(Senator Truan in Chair)

SENATE RESOLUTION 260

Senator Parker offered the following resolution:

S.R. 260, Recognizing February 24, 1993, as Farmers Insurance Group Day at the State Capitol.

The resolution was read and was adopted by a viva voce vote.

(President in Chair)

GUESTS PRESENTED

Senator Truan was recognized and introduced the Director of Generalitat de Catalunya Department of Presidency America/Catalunya 1992 Commission, Dr. Jose P. Garcia i Reyes of Spain, who is accompanied by Ms. Pat Smothers, member of the International Trade Commission.

The Senate welcomed its distinguished guests.

SENATE BILL 4 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 4** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment No. 1

Amend **S.B. 4** as follows:

- (1) On page 3, strike lines 6-24.
- (2) On page 7, line 20, strike "For".
- (3) On page 7, strike lines 21-24.

Amendment No. 2

Amend S.B. 4, Section 16.012 by inserting into Section 16.012(a)(2), page 6, line 20, the words "tangible personal" in front of the word "property."

The amendments were read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendments to S.B. 4 by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 88**

Senator Henderson submitted the following Conference Committee Report:

Austin, Texas
February 23, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 88 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HENDERSON

SHELLEY

WHITMIRE

ELLIS

HARRIS OF DALLAS

On the part of the Senate

EDWARDS

DUTTON

BAILEY

PITTS

HILL

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the validation of governmental acts and proceedings by municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 28, Revised Statutes, is amended by adding Article 974d-40 to read as follows:

Art. 974d-40

Sec. 1. APPLICATION. This article applies to any incorporated city, town, or village operating under general law or under a home-rule charter.

Sec. 2. ADOPTION OF HOME-RULE CHARTER. (a) All

governmental acts and proceedings of a municipality covered by this article regarding the adoption of a home-rule charter are validated as of the dates on which they occurred.

(b) All governmental acts and proceedings of the municipality since adoption or attempted adoption of the charter are validated as of the dates on which they occurred.

Sec. 3. INCORPORATION PROCEEDINGS. (a) The incorporation proceedings of all cities and towns in this state that incorporated or attempted to incorporate under the general laws of the State of Texas, whether under the aldermanic or commission form of government, and which have functioned or attempted to function as incorporated cities or towns since the date of such incorporation or attempted incorporation are validated as of the date of such incorporation or attempted incorporation. The incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or incorporation proceedings may not have been in accordance with law.

(b) All governmental proceedings performed by the governing bodies of all such cities and towns and their officers since their incorporation or attempted incorporation are validated as of the date of such proceedings, including extensions or attempted extensions of extraterritorial jurisdiction undertaken at the request of owners of territory.

Sec. 4. ANNEXATION PROCEEDINGS. (a) The governmental acts and proceedings of a city or town relating to the annexation or attempted annexation of adjacent territory by the city or town before December 31, 1992, are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with the procedural or other requirements of Chapters 42 and 43, Local Government Code, or other law. The boundaries fixed by the annexation or attempted annexation are validated.

(b) The governmental acts and proceedings of a city or town occurring after annexation may not be held invalid on the ground that the annexation, in the absence of this article, was invalid.

Sec. 5. ANNEXATIONS NOT VALIDATED. This article does not validate governmental acts or proceedings relating to a city's or town's annexation or attempted annexation of territory in the extraterritorial jurisdiction of another city or town without the consent of that city or town in violation of Chapters 42 and 43, Local Government Code.

Sec. 6. ORDINANCE OR REGULATION NOT VALIDATED. This article does not validate any ordinance or regulation of a municipality that violates Section 1.06 or 109.57, Alcoholic Beverage Code.

Sec. 7. EFFECT OF LITIGATION. This article does not apply to any matter that on the effective date of this article:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

SECTION 2. Title 28, Revised Statutes, is amended by adding Article 974d-41 to read as follows:

Art. 974d-41

Sec. 1. APPLICATION. This article applies to any municipality having a population of 1.5 million or more.

Sec. 2. PROCEEDINGS VALIDATED. The governmental acts and proceedings of a municipality relating to a bond election that was held before December 1, 1991, and at which the ballot proposition was approved by more than 60 percent of the voters voting on the proposition are validated as of the dates they occurred. The validation includes the preparation and wording of the ballot proposition, any action taken by the municipality in calling and holding the bond election, and any other action taken by the municipality before the effective date of this article in connection with the issuance of any bonds approved in the bond election. The acts and proceedings may not be held invalid because they were not performed in accordance with law. A municipality may take any further action or conduct any further proceeding necessary to complete the issuance of the bonds approved at the bond election, and, when issued, the bonds are valid and binding obligations of the municipality in accordance with the terms of the bonds.

Sec. 3. EFFECT ON LITIGATION. This article does not apply to any matter that on the effective date of this article has been held invalid by a final judgment of a court of competent jurisdiction.

Sec. 4. RECOMMENDATION. The legislature recommends to the governing body of a municipality that it adopt the aggregate goals for the municipality's contracting with minority and women enterprises set forth in the June 1992, report of Texas Southern University as specified for the categories of construction, procurement, and professional services. A cause of action may not be maintained to enforce this section or to recover damages based on the failure of the municipality to follow the recommendation of this section.

Sec. 5. CONDITIONS AFFECTING EXPENDITURE OF BOND PROCEEDS. (a) Expenditures of the bond proceeds by the municipality shall:

(1) be made in accordance with the covenants of all ordinances enacted by the municipality before the bond election approving the bonds;

(2) benefit the residents of the municipality so that the benefits or expenditures, if feasible, reflect the demographic makeup of the municipality; and

(3) to the extent the proceeds are designated for housing in the municipality's bond proposition, be made for construction and rehabilitation of housing and all matters incidental to housing construction and rehabilitation on-site.

(b) This section applies cumulatively to the entire bond authorization, rather than to individual bond issues or contracts for the expenditure of the proceeds, and the municipality's governing body is responsible for making decisions on individual bond issues and contracts.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is

hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The Conference Committee Report was filed with the Secretary of the Senate.

SENATE RULE 12.09(a) SUSPENDED

On motion of Senator Henderson and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on S.B. 88.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 88 ADOPTED

Senator Henderson called from the President's table the Conference Committee Report on S.B. 88. The Conference Committee Report was filed with the Senate on Wednesday, February 24, 1993.

On motion of Senator Henderson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Barrientos.

Senator Barrientos moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

Senator Nelson requested that JUDGE SIDNEY C. FARRAR, JR., appointed to be Justice of the Court of Appeals, Second Supreme Judicial District, be severed.

The request was granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 29, Nays 1.

Nays: Nelson.

Absent: Sims.

Members, University of North Texas Board of Regents: WILLIAM DAVID BAYLESS, SR., Grayson County; NANCY STRAUSS HALBREICH, Dallas County; DON L. RIVES, Travis County.

Members, Texas Air Control Board: DR. ELAINE MOWINSKI BARRON, El Paso County; DR. JACK V. MATSON, Harris County; KIRK P. WATSON, Travis County.

Members, Angelina and Neches River Authority Board of

Directors: JOHN PHILLIP FRIESEN, Angelina County; BARBARA H. GREEN, Cherokee County; WYLIE A. PIRKLE III, Henderson County; PAUL H. "PETE" SMITH, Nacogdoches County; HERMAN WRIGHT, Jasper County.

Members, Central Colorado River Authority Board of Directors: HERMAN BENTON CASSADAY, Coleman County; THELBERT ELKINS, Coleman County.

Members, Coastal Water Authority Board of Directors: JOHNNIE GLENN JENNINGS, Chambers County; S. ELWOOD YORK, JR., Harris County.

Members, Guadalupe-Blanco River Authority Board of Directors: JOSEPH PATRICK KELLY, Victoria County; WARREN P. "PAT" KIRKSEY, Caldwell County; JOHN C. TAYLOR, Guadalupe County.

Members, Lavaca-Navidad River Authority Board of Directors: HARRY L. HAFERNICK, Jackson County; J. B. HOUSSEON, Jackson County; THERESA McCAIG, Jackson County.

Members, Lower Concho River Water and Soil Conservation Authority: EUGENE R. RODGERS, Concho County; BENJAMIN O. SIMS, Concho County.

Member, Nueces River Authority Board of Directors: MADGE ELIZABETH BELCHER, Kinney County.

Member, Red River Authority of Texas Board of Directors: EDWARD L. LEHMAN, JR., Wilbarger County.

Members, Runnels County Water Authority Board of Directors: PAMELA BAUERLEIN, Runnels County; DALTON E. CROCKETT, Runnels County; L. AUBREY FAUBION, JR., Runnels County.

Members, Sabine River Authority Board of Directors: NOLTON L. BROWN, Orange County; OTTIS H. "BO" LEWIS, Sabine County; GERALDINE JORDAN NICHOLS, Wood County.

Members, Sulphur River Basin Authority Board of Directors: MIKE HUDDLESTON, Bowie County; IVORY E. MOORE, Hunt County.

Members, Upper Colorado River Authority Board of Directors: VICTOR WAYNE CHOATE, Tom Green County; RUBY N. GUTIERREZ, Tom Green County; PATRICIA PRUITT IVEY, Coke County; SARA T. ORTIZ, Mitchell County.

Member, Upper Guadalupe River Authority Board of Directors: DONALD C. OEHLER, Kerr County.

Members, Upper Neches River Municipal Water Authority: EDWARD McCOY, JR., Anderson County; CATHY ANN STARK, Anderson County.

Member, Evergreen Underground Water Conservation District Board of Directors: WILLIAM OREN LAMB, Atascosa County.

NOMINEE CONFIRMED

Senator Barrientos then moved confirmation of JUDGE SIDNEY C. FARRAR, JR., to be Justice of the Court of Appeals, Second Supreme Judicial District.

The nominee was confirmed by the following vote: Yeas 30, Nays 1.
Nays: Nelson.

**COMMITTEE SUBSTITUTE
SENATE BILL 267 ON SECOND READING**

Senator Zaffirini moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that C.S.S.B. 267 be taken up for consideration at this time:

C.S.S.B. 267, Relating to the certification of births and to birth certificates.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 267 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 267 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 277 ON SECOND READING

Senator Zaffirini moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that S.B. 277 be taken up for consideration at this time:

S.B. 277, Relating to reporting a finding of paternity to the State Registrar of Vital Statistics.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 277 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 277 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 183 ON SECOND READING

Senator Barrientos moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that S.B. 183 be taken up for consideration at this time:

S.B. 183, Relating to the tuition exemption at institutions of higher education for students who are blind or deaf.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time.

Senator Barrientos offered the following committee amendment to the bill:

Amend **S.B. 183** by inserting the following between the word "course" and "in" on page 3, line 20: "in a degree program"

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 183 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 183** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Harris of Dallas in Chair)

SENATE BILL 76 ON SECOND READING

Senator Turner moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that **S.B. 76** be taken up for consideration at this time:

S.B. 76, Relating to appeals of certain interlocutory orders and judgments upholding those orders.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Brown, Henderson.

The bill was read second time.

(President in Chair)

Senator Turner offered the following committee amendment to the bill:

Committee Amendment

Amend Section 1 of S.B. 76 as follows:

1) Delete Subdivision (6) in its entirety and substitute the following:

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article 1, Section 8 of the Texas Constitution, or Chapter 73 of the Texas Civil Practice and Remedies Code.

2) Add a new Section 51.015 to read as follows:

Sec. 51.015. COSTS OF APPEAL. In the case of an appeal brought pursuant to Section 51.014(6) of this chapter, each party shall be liable for and taxed its own costs of the appeal.

The committee amendment was read.

Senator Turner offered the following amendment to the committee amendment:

Floor Amendment

Amend the committee amendment to S.B. 76 as follows:

In Subdivision (6) of Section 1, add a comma after "media" on line 27 and insert the phrase "acting in such capacity," between the comma and "arising."

The amendment to the committee amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of the committee amendment as amended, the committee amendment as amended was adopted by a viva voce vote.

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTES

Senators Brown and Henderson asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 76 ON THIRD READING

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 76 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Brown, Henderson, Shelley.

The bill was read third time.

Question — Shall the bill be finally passed?

MESSAGE FROM THE HOUSE

House Chamber
February 24, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 14, Recognizing the City of Mesquite as the official Rodeo Capital of Texas.

H.C.R. 24, Encouraging the Texas Education Agency (TEA) to promote the use of the NRA's Eddie Eagle Gun Safety Program in our schools to help prevent firearms accidents among children.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

GUEST PRESENTED

The President introduced to the Senate Judge Morris Overstreet of the Court of Criminal Appeals.

The Senate welcomed Judge Overstreet.

GUESTS PRESENTED

Senator Sibley was recognized and introduced the Baylor Ambassadors, who were visiting the Senate.

The Senate welcomed these guests.

(Senator Harris of Dallas in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 27 ON SECOND READING**

Senator Moncrief moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that C.S.S.B. 27 be taken up for consideration at this time:

C.S.S.B. 27, Relating to cancellation of wine and beer retailer permits and retail dealer on-premise licenses.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time.

(President in Chair)

Senator Harris of Tarrant offered the following amendment to the bill:

Amend C.S.S.B. 27 as follows:

On line 48, page 1, (committee printing) add after "hearing" the additional language "within the county where the premises are located".

Delete SECTION 2. and SECTION 3.

Add a new SECTION 2. to read:

The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Moncrief and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 27 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.B. 27 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 178 ON SECOND READING

Senator Parker moved that the regular order of business, Senate Rule 7.13 and Section 5 of Article III of the State Constitution be suspended and that S.B. 178 be taken up for consideration at this time:

S.B. 178, Relating to participation in benefits from the Employees Retirement System of Texas for certain law enforcement officers.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 178 ON THIRD READING

Senator Parker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S.B. 178 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 416 REREFERRED

On motion of Senator Parker and by unanimous consent, S.B. 416 was withdrawn from the Committee on Natural Resources and was rereferred to the Committee on Economic Development.

MEMORIAL RESOLUTIONS

S.R. 307 - By Armbrister: In memory of Jewell Heard Whitlow of Refugio.

S.R. 313 - By Sims: In memory of James Edward Norris of San Angelo.

CONGRATULATORY RESOLUTIONS

H.C.R. 57 - (Bivins): Honoring the Museum of the Southwest of Midland on its 25th anniversary.

S.C.R. 33 - By Ratliff: Recognizing March 9, 1993, as Marshall Day.

S.R. 306 - By Ellis: Recognizing the month of March 1993 as National Mental Retardation Awareness Month.

S.R. 308 - By Henderson: Congratulating Clinton John Burkholder on achieving the rank of Eagle Scout.

S.R. 309 - By Henderson: Congratulating Aaron Parker on achieving the rank of Eagle Scout.

S.R. 310 - By Sims: Commending J. Paul Turner of Sweetwater for his contributions to the Hereford industry.

S.R. 312 - By Sims: Congratulating Armstead Kone on the occasion of his 101st birthday.

S.R. 314 - By Harris of Tarrant: Honoring Robert Clarence Metzger on the occasion of his 56th birthday.

S.R. 315 - By Barrientos: Recognizing Ruben Lopez on his appointment as Assistant Police Chief for the Austin Police Department.

S.R. 317 - By Ellis: Recognizing Edward F. Fernandes, who was named a partner in the law firm of Weil, Gotshal and Manges.

S.R. 318 - By Ellis: Recognizing John Osteen for his achievements and service as pastor of Lakewood Church.

S.R. 319 - By Armbrister: Honoring the many independent community banks of Texas and the contributions they have made to the growth and prosperity of their communities.

ADJOURNMENT

On motion of Senator Harris of Dallas, the Senate at 12:30 p.m. adjourned, in memory of Otto E. Scherz, until 10:00 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

February 23, 1993

FINANCE — C.S.S.B. 79, C.S.S.B. 378

February 24, 1993

FINANCE — C.S.S.B. 384, C.S.S.B. 78, C.S.S.B. 383, C.S.S.B. 369,
C.S.S.B. 380

CRIMINAL JUSTICE — C.S.S.B. 155

STATE AFFAIRS — S.B. 372, C.S.S.B. 77

FINANCE — C.S.S.B. 82

INTERGOVERNMENTAL RELATIONS — S.B. 341

STATE AFFAIRS — C.S.S.B. 371, C.S.S.B. 385

EDUCATION — S.B. 362, C.S.S.B. 213, C.S.S.B. 393

INTERGOVERNMENTAL RELATIONS — C.S.S.B. 353

**In Memory
of
Otto E. Scherz**

Senator Sims offered the following resolution:

(Senate Resolution 311)

WHEREAS, The death of Otto E. Scherz on February 14, 1993, represented a deep personal loss to his loved ones and his many friends throughout the State of Texas; and

WHEREAS, Born in Tom Green County to Phillip Scherz and Norma Sonnenburg Scherz on July 15, 1921, Otto Scherz graduated from San Angelo High School and received his bachelor's degree from Texas A&M University in 1942; and

WHEREAS, While he was stationed at Fort Sill, Oklahoma, Otto Scherz married Gwendolyn Brown on June 2, 1943; and

WHEREAS, Sent overseas in March, 1944, Otto Scherz participated in all five major battles of the European Theatre of Operation; and

WHEREAS, After World War II was over, General Scherz and his wife returned to Texas A&M University where he pursued an advanced degree in landscape architecture before they joined the family business, Scherz Nursery; and

WHEREAS, A well-known and respected member of his community, General Scherz was involved in the Downtown Lion's Club and served as president in 1958 and deputy district governor in 1959; he served on the Board of Stewards of the First United Methodist Church and on the Board of Directors of the San Angelo Symphony, the Community Theater, and the Miss Wool of America Pageant; and

WHEREAS, Highly esteemed by his peers, General Scherz was a member of the Texas Landscape Architects and served as president from 1959 through 1961; he was a member of the first State Licensing Board for Landscape Architects as well as chairman from 1972 to 1973; and

WHEREAS, A true patriot, General Scherz was called to active duty during the Berlin Crisis in 1961; when his unit was deactivated, General Scherz stayed in the service to finish the United States Army Command and General Staff College; he represented the Fifth Army on the Pentagon Advisory Committee in 1964 through 1966; and

WHEREAS, A well-decorated combat veteran, General Scherz earned several awards including the Bronze Star and the Legion of Honor; he retired from the military with the rank of Major General in 1978; and

WHEREAS, This fine military man was selected for the National Guard Hall of Honor in 1987; his was a life dedicated to the honor of his nation; and

WHEREAS, After retiring from the United States Army, General

Scherz became involved in the activities of Fort Concho and held the office of president of the board; he will be greatly missed; and

WHEREAS, The death of this fine gentleman and soldier was felt by all those who benefitted from his generosity and exemplary conduct; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 73rd Legislature, hereby extend sincere condolences to the members of his family: his wife, Gwendolyn Brown Scherz; his daughters, Ann Madison and Cynthia Burns; his sister, Lola Mae Banta; his brother, Harold Scherz; and his four grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Otto E. Scherz.

The resolution was read.

On motion of Senator Harris of Dallas and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Sims and by unanimous consent, the resolution was adopted by a rising vote of the Senate.